

MILPITAS PLANNING COMMISSION AGENDA REPORT

Category: Public Hearings

Report prepared by: Dennis Carrington

Public Hearing: Yes: X No:

Notices Mailed On: 7-14-06 Published On: 7-13-06 Posted On: 7-14-06

TITLE: **GENERAL PLAN AMENDMENT DENIAL GP2005-11, and
ZONE CHANGE DENIAL ZC2005-2.**

Proposal: A request by Fairfield Residential LLC for a General Plan Amendment (GP2005-11) from the Industrial Park designation to the Multi Family High Density Residential with a PUD designation; and a Zone Change (ZC2005-2) from MP – Industrial Park to PUD – Planned Unit Development.

Location: West of Murphy Ranch Road, south of Technology Drive, north of the Hetch Hetchy pipeline and east of Coyote Creek

APN: 086-01-041 and 042

RECOMMENDATION:

1. Recommend to the City Council denial of General Plan Amendment GP2005-11 and Zone Change ZC2005-2, or
2. Do not uphold staff's recommendation and recommend to the City Council that staff initiate processing of the rezone and general plan amendment.

Applicant: Shon Finch, Fairfield Residential LLC, 5510 Morehouse Drive, Suite 200, San Diego, CA 92121

Property Owner: David Klonsky, Lucent Technologies, 600 Mountain Avenue, Murray Hill, New Jersey, 07974

Previous Action(s): Previous application by Fairfield Residential for this site on February 4, 2005, was postponed at the request of the applicant.

General Plan Designation: Industrial Park

Present Zoning: Industrial Park (MP)

Existing Land Use: Vacant land

Agenda Sent To: Applicant & Owner (as noted above)

Attachments: Applicant's letter of project description
Octel Development Agreement

PJ# 3170

BACKGROUND

Site Description

The site proposed for the subject general plan amendment and rezone is located on a vacant and level 21.73-acre site. The subject property is bounded on the east by Murphy Ranch Road, the north by Technology Drive, the south by the Hetch Hetchy aqueduct and on the west by Coyote Creek. KLA Tencor is located to the north, Maxtor/Seagate and SanDisk to the east, and Intersil, Phoenix Technologies and Avaya are located to the south. Cisco Systems is located nearby to the east. Each of these companies provides a significant economic base for the City of Milpitas. If the rezone and General Plan Amendment are allowed, the applicant plans to proceed with a 659 unit residential project which would proceed under a separate permit process. An aerial photo of the subject site and vicinity is provided below:



THE APPLICATION

This application for a zone change is submitted pursuant to Section 62, "Amendments" of the Zoning Ordinance and the application for a General Plan Amendment is submitted pursuant to Chapter 1.5 of the General Plan, "Amendments to the General Plan". The applicant is also requesting a modification of the Development Agreement between the City of Milpitas and Octel Communications Corporation pursuant to Section 10 of that document. The Development Agreement, which does not expire until August 2007 and as described further in this report, is intended for the long-term build out of the property for business park and research and development uses.

PROJECT DESCRIPTION

If the rezone and General Plan Amendment are not denied and the Planning Commission and, ultimately the City Council, direct staff to initiate the rezone and General plan Amendment, the applicant plans to proceed with an "S" zone application to construct 285 apartments on 14.15 acres and 374 apartments on 7.58 acres (total of 659 units on 21.73 acres) with a density of 30.33 dwelling units per acre. The proposal requires a General Plan Amendment (GP2005-11) from Industrial Park to Multi Family High Density Residential with a PUD (21-40 units per acre), Zone Change (ZC2005-2) from MP – Industrial Park to PUD – Planned Unit Development, "S"-Zone (SZ2005-13), Major Tentative Map (MA2005-7, and Environmental Impact Assessment (EA2005-9).

REASONS FOR DENIAL OF REQUESTED PERMITS

Conflicts with policies of the General Plan. The project is in conflict with several policies of the General Plan. The staff comment on the conflict with policy is shown in *italics* after the policy.

2.a-G-1. Maintain a land use program that balances Milpitas' regional and local roles by providing for a highly amenable community environment and a thriving regional industrial center. *The conversion of lands designated Industrial Park to residential land uses, by this project and the residential development proposal that would follow, would negatively impact Milpitas' position as a thriving industrial center by limiting the future supply of industrial land. Further, the presence of new residential populations adjacent existing high-tech companies will have a negative effect on any future expansion plans of those firms if a rezone to residential would create a land use that is not compatible.*

2.a-G-2. Maintain a relatively compact urban form. *Residential, commercial and civic land uses should be located compactly together to foster a walkable, healthy, mixed-use environment. The placing of high density residential development away from other residential, commercial and land uses would diffuse the existing compact urban form of the City of Milpitas and place populations in location isolated from necessary facilities such as parks, schools, libraries, neighborhood commercial uses and day care. The City, with the adoption of the Midtown.*

Specific Plan and the Draft Transit Area Specific Plan, provides for multi-family residential in effort to achieve this objective. This rezone and general plan amendment would be counterproductive to that objective.

2.a-G-5. A park-like setting will be created by a series of local parks, school sites, trails, and a greenway system laced throughout all living areas. *The proposed 659-unit apartment and condominium development would be located in a setting devoid of local parks and schools. The project will be located along a regional trail that parallels Coyote Creek, however the development will still be isolated from other parks that provide playfields, recreation and picnic areas.*

2.a-I-3. Encourage economic pursuits which will strengthen and promote development through stability and balance. *The conversion of Industrial Park lands to residential uses would diminish economic development and employment in the City by removing important Industrial Park lands that could be the sites of future high tech value-added companies and result in land uses that would be an economic drain on the City. If Milpitas is to continue as a major player in the Silicon Valley of the future it must retain its industrial economic base.*

2.a-I-5. Maintain policies that promote a strong economy which provides economic opportunities for all Milpitas residents within existing environmental, social, fiscal and land use constraints. *The conversion of Industrial Park lands to residential uses would diminish economic opportunities for Milpitas residents because sites for future jobs would be replaced by housing. Job expansion at nearby high tech firm could be prevented if they anticipate complaints from nearby residents.*

2.a-I-7. Provide opportunities to expand employment, participate in partnerships with local business to facilitate communication, and promote business retention. *The presence of 659 residential units adjacent to some of Milpitas' most important industrial firms will discourage business expansion and business retention. If businesses feel that they cannot expand or remain due to the presence of adjacent residential uses, they will not expand and will potentially relocate to another city.*

2.b-I-2. Consider locating housing in close proximity to industrial developments **where they can be served by existing city services and facilities.** The proposed 659 residential units will not be served with parks, schools, libraries, neighborhood commercial uses or day care.

Conflict with the purpose and intent of the Octel Development Agreement/their expiration.

A Development Agreement between the City of Milpitas and the Octel Communications Corporation was entered into on August 19, 1997. The agreement states that Octel Communications Corporation and the other owners of the Milpitas Business Park lands intend to build a "multi owner corporate facility" that would comply with the restrictions set forth in the Milpitas General Plan, the Milpitas zoning ordinances, applicable Milpitas Municipal Code

regulations, Milpitas Business Park Master Plan and any other “Land Use Regulations”. The general plan and zoning ordinances designated the land as Industrial Park. The Milpitas Business Park Master Plan stated that the land proposed to be developed by Fairfield Residential LLC would be used for office, research and development, hotel, and other commercial land uses. The term of the agreement was set to run for 5 years commencing on August 19, 1997. If, however, the owners collectively exceeded the 600,000 square feet immediate construction level, the agreement would run for 10 years from the effective date. Cisco Systems alone constructed 1.11 million square feet of space between August 19, 1997 and August 19, 2002. Therefore, the term of the agreement was extended to August 19, 2007. As such the Fairfield Residential LLC development would not be consistent with the Development Agreement and could not be approved unless the City and Octel Communications Corporation (or its successor in interest) by mutual agreement terminate or amend the terms of the agreement pursuant to California Law for the adoption of development agreements.

Potential for additional residential development proposals if this project is approved. If the Fairfield project is approved, it is inevitable that additional residential conversion proposals will be submitted. Staff has had conversations with residential developers about converting Industrial Park lands south of this project for residential development; staff expects there will be proposals for more residential conversions if the Fairfield project is approved. A precedent was set when the City approved the Sinclair Horizons project on Los Coches Street in an area designated Manufacturing and Warehousing on the General Plan. The developer of Sinclair Horizons will soon be filing a proposal to convert industrial land immediately south of Sinclair Horizons to more residential development.

Conflict with surrounding uses/Hazardous materials. The proposed residential land uses would place 659 residences adjacent to high-tech enterprises like KLA Tencor, Maxtor/Seagate, SanDisk, Intersil, Phoenix Technologies, Avaya Corporation and Cisco Systems. These corporations may use hazardous materials in current or future manufacturing processes that could expose possible residents to those hazardous materials with disastrous results. A catastrophic event such as an earthquake or fire could have tragic consequences. Further, there are no compatible land uses in the vicinity such as parks, schools, libraries, neighborhood commercial uses or day care that could support residential populations.

Negative impacts to long-term expansion of Milpitas’ research and development/technology base. The conversion of 21.73 acres of prime industrial land, with potential conversion of adjacent lands in the future, would negatively impact the long-term expansion of Milpitas’ research and development and technology base by restricting the acres available for such use.

Negative impacts to expansion and business plans of surrounding businesses. The site is surrounded by KLA Tencor to the north, Maxtor/Seagate to the east, Avaya, Intersil and Phoenix Technologies to the south. Cisco Systems is located nearby to the east. These firms may not expand or may leave Milpitas if they believe that the residents of the nearby residential development would oppose future expansion of industrial uses that may propose industrial processes involving hazardous materials. This could have a chilling effect on business expansion and business retention.

The project conflicts with the Milpitas Economic Development Plan. A goal of the City of Milpitas 2005 Economic Strategic Action Plan is to: “Retain and Support the Success of Existing and New Businesses”. Objective 4 under that goal seeks to “Retain and expand existing Milpitas-based companies.” This would not happen if residential conversion of Industrial Park lands were approved.

Potential lawsuit by the City of San Jose/McCarthy Ranch lawsuit. The City of San Jose and several parties sued the City of Milpitas and the McCarthy Ranch Trust when it proposed approval of a residential development on McCarthy Ranch. San Jose was concerned that potential residents would be affected by and complain about the sewage treatment facility and sanitary landfill lying to the west. The parties entered into a settlement agreement. The agreement placed a restriction of development to non-residential development with a floor area ratio (FAR) not exceed .35 on average. No odor sensitive uses such as residential, including single-family residences, multi-family units, hotels, motels, residence inn or club, boardinghouse, or other similar facility with overnight occupancy, schools, free-standing day care facilities, hospitals, church or outdoor amphitheatres may be allowed for 50 years.

Residential development in the Midtown Specific Plan and the Proposed Transit Area Specific Plan. It is anticipated that approximately 3,500 dwelling units will be constructed during the life of the Midtown Specific Plan. Approximately 7,200 units are proposed for the Transit Area Specific Plan. Together, the plans will provide 10,700 dwelling units. There is sufficient developable land within these two specific plans to provide for Milpitas’ residential needs for the foreseeable future. It is not necessary to convert valuable industrial park lands to residential land uses to provide for Milpitas’ residential needs.

FINDINGS FOR DENIAL

1. The project is in conflict with the Milpitas General Plan.
2. The proposed project is in conflict with the Development Agreement between the City of Milpitas and Octel Communications Corporation (and successors in interest) until August 19, 2007 unless the agreement is amended.
3. The proposed residential land use is in conflict with the existing industrial park uses to the north, east and south of the development and would expose potential residents to hazardous materials releases during earthquakes or fires.
4. The proposed project would have negative impacts to the long-term expansion of Milpitas’ research and development/technology base.
5. The proposed project would have negative impacts upon the potential expansion of and business plans of surrounding businesses.
6. The proposed project would be in conflict with the Milpitas Economic Development plan that seeks to retain and support the success of existing and new businesses.
7. The proposed project would further the erosion of the City’s economic base by converting industrial park lands to residential uses.

GENERAL PLAN AMENDMENT (GP2005-11) AND ZONE CHANGE (ZC2005-2)

8. There is limited available wastewater treatment capacity in the City of Milpitas. The proposed project should not receive scarce wastewater treatment capacity because it is farther than 1.1 miles from the nearest elementary school (Zanker) (2.4 miles by roadways), is not located adjacent to existing residential land uses and does not include a mixed-use component as described in the Milpitas Municipal Code. Other projects that meet these criteria should receive the limited wastewater treatment capacity that remains.
9. The proposed project is isolated from necessary public services and amenities such as parks, schools, libraries, neighborhood commercial uses or day care that support residential populations.
10. The proposed project could subject the City of Milpitas to potential litigation similar to that over McCarthy Ranch in the past.'

RECOMMENDATION

1. Recommend to the City Council denial of General Plan Amendment GP2005-11 and Zone Change ZC2005-2

OR

2. Do not uphold staff's recommendation and recommend to the City Council that staff initiate processing of the rezone and general plan amendment.

Fairfield Residential

March 9, 2006

Dennis Carrington
City of Milpitas Burbank Planning Division
455 E. Calaveras Blvd.
Milpitas, CA 95035

RE: Application Resubmittal for General Plan Amendment, Rezone, S-Permit and Tentative Map
Proposed Residential Development at the Southwest Corner of Murphy Ranch Road & Bellew Drive

Mr. Carrington,

Fairfield Residential is resubmitting an application new residential development on Murphy Ranch Road. In support of your review, I have provided an updated project narrative, as well as responses to you comment letters dated, July 29, 2005 and September 8, 2005 respectively.

Current Site Information:

Location:

The site is rectangular in shape and is generally oriented, lengthwise, in a north/south direction. Site boundaries are defined by Technology Drive to the north, Coyote Creek to the west, Murphy Ranch Road to the east and the Hetch Hetchy right of way to the south.

Area:

21.73 Total Acres
For Sale Parcel = 14.15 Acres
Rental Parcel = 7.58 Acres

Current Use:

The site is currently vacant land

Current Zoning:

MP – Industrial Park District.

Proposed Zoning:

PUD – Planned Unit Development

Flood Zone:

The site is currently located within flood zone X

Development Proposal:*Use:*

Proposal consists of two residential communities totaling approximately 663 residential units. These adjacent communities will consist of approximately 279 for-sale townhomes and 374 apartment homes respectively.

*Consistency with
The General Plan:*

The City's General Plan identifies the subject property land use as Industrial Park. This development proposal would require a zoning and general plan amendment from Industrial Park to a Planned Unit Development. While this development proposal is not consistent with the City's current land use plan, Fairfield believes this proposal is supported by chapter 2 section 2.6 (Land Use Principals and Policies) of the General Plan. Specifically, the Guiding Principle and Implementing Policies noted within sec. 2.6.b. Jobs/Housing Relationship.

This proposed development would provide the City of Milpitas with needed rental and for-sale housing while utilizing existing infrastructure and without eliminating habitat or open space areas within the City. In addition to the new housing benefit, this site is approximate to jobs, major retail, commercial, public transit and the Coyote Creek regional trail system.

Townhome Proposal:*Site Plan:*

The site plan illustrates overall building orientation, internal travelways and open space uses. Buildings have been oriented to address Murphy Ranch Road, as well as many of the internal drives to create a strong urban environment. Pedestrian circulation has been emphasized throughout the site with connectivity to surrounding employment, retail, public transit and recreational opportunities.

Building Type:

The proposed for-sale development will consist of three story townhome style homes with direct access garages.

Proposed Amenities:

- Resident pool area including; pool, spa, sundeck, built-in BBQs and trellis shade structures.
- Generous Landscape treatment throughout the development
- Community trail/linear park along the property's southern boundary.

Off-Street Parking:

Vehicle and bicycle parking for this development shall be consistent with current R4 zoning standards for multifamily dwelling units. Vehicular parking shall be accommodated with a mix of garage and open spaces.

Rental Housing Proposal:

Site Plan:

The site plan illustrates the overall building orientation, parking garage location and open space uses. This plan sets the building either on axis or parallel with the City street system. The generous building breaks on all four building facades will be developed into courtyard and passive open space areas. The building layout will promote pedestrian circulation with links to the plazas, trails, employment and public transportation.

Building Type:

The proposed apartment development will consist of one four story residential building and one five level parking garage. The building will consist of one, two and three bedroom units offered in approximately 8 different floor plans with square footages ranging from 590 sf to 1,496 sf. The parking garage has been located in building's center in order to screen it from view. Locating the garage in this manner not only screens the garage from view, it provides a parking area that is central to all apartment homes and has direct access to each level of housing. The building will be designed with a variety of architectural elements and enhanced articulation, as well as, exterior materials and color variations to further articulate and define the buildings.

Proposed Amenities:

- Resort style pool area including; pool, spa, sundeck, built-in BBQs and trellis shade structures.
- Community room with full kitchen for resident functions and gatherings.
- Fully equipped fitness center
- Fully equipped business center
- Generous Landscape treatment throughout the development
- Community trail/linear park along the property's southern boundary.

Off-Street Parking:

Vehicle and bicycle parking for this development shall be consistent with current R4 zoning standards for multifamily

dwelling units. Vehicular parking shall be accommodated with a five level parking garage.

Mapping Proposal:

Tentative Parcel Map:

Although the site is currently split in two separate parcels, a tentative parcel map is being proposed to create two legal lots with a single lot condominium designation on each parcel. The two lots are proposed to remain in their current acreage and configuration of 14.15 acres over the south portion of the site and 7.58 acres over the north portion.

Responses to Comments:

As follow up to your respective letters dated, July 29, 2005 and September 8, 2005, I am providing you with responses and associated plan revisions which address the comments from each letter. Responses are provided in the order presented in your letters.

Letter Dated July 29, 2005

1. Planning and Zoning application signed by the property owner is included.
2. Current title commitment is included.
3. List of adjacent property owners and residential renters is pending.
4. Affidavit of notification and mailing is pending.
5. Two sets of stamped and addressed envelopes are pending.
6. Three copies of our site geotechnical study are included.
7. Traffic Impact studies are being completed as a part of the project EIR.
8. Phase I ESA has been provided
9. Habitat studies are being completed as a part of the project EIR
10. Biological studies are being completed as a part of the project EIR.
11. There are no trees on-site, therefore, we do not believe a tree survey is necessary
12. C.3 Stormwater Control Plan is included
13. Final Tentative Map document shall be in accordance with the noted dimensions.
14. Typical paseo enlargement has been provided.
15. Noted details have been provided
16. Noted street cross sections have been provided.
17. Park/Open space improvements are being shown over the Hetch Hetchy ROW.
18. Affordable units are anticipated within this development in accordance with typical City standards. Specific details shall be worked out with the City's housing department.
19. Building elevations have been provided without landscaping
20. Complete elevations have been provided.
21. Complete garage elevations have been provided.
22. Interior court elevations have been provided; see sheets A-210 & A-211
23. Material call-outs have been shown; see sheets A-209, A-210 & A-211
24. Park furniture details provided.

25. Noted details provided; see sheets A-218
26. Unit cross-sections provided.
27. Currently we do not expect to have a gate in the parking garage structure; see sheets A-212
28. Garage cross sections provided; see sheets A-212
29. Sun-shadow studies provided; see sheets A-216 & A-217
30. Photometric lighting plan is pending.
31. Lighting plan is pending.
32. Trash Collection Summary:
All trash and recyclable debris will be tossed by residents into separate trash and recyclable chutes, which appear on each floor level. All trash / recycling chute access doors are to be handicap accessible and 16" square on all levels. Two dedicated trash collection rooms at the ground level will collect the wastes on 3 cubic yard bins. These rollaway bins will be delivered by a scout truck to an on site compactor 7 days a week. Frequency was derived from city zoning code requirement V-200-3.40 of 34 lbs. of trash per dwelling unit per week and 7 lbs of recycle trash per dwelling unit per week. The trash collection plan was coordinated with the Utility Engineering Section of Milpitas with Ms. Leslie Stobbe on Dec. 28, 2005.

Rollaway bins and compactor will be provided by management. Bins to be trainable for delivery to compactor with bottom pocket channels to allow for conventional front loading dumping equipment. Large items disposed of by residents that will not fit in chutes will be collected by management and privately removed off-site.

TRASH CAPACITY CALCULATIONS (Per Milpitas Utility Engineering Section)

374 Total Units x 34 Lbs. = 12,716 Lbs.
Per Week
 $12,716 / 100 = 127.16 \text{ C.Y.}$
Per Week
 $127.16 \text{ C.Y.} / 3 \text{ C.Y.} = 42.4 \text{ Bins}$
If Picked Up Once a Week
 43 Bins/7 Days per Week = 6 Bins Required
If Picked Up Daily

RECYCLABLE CAPACITY CALCULATIONS (Per Milpitas Utility Engineering Section)

374 Total Units X 7 Lbs. = 2,618 Lbs.
Per week
 $2,618 / 45 = 58.17 \text{ C.Y.}$
Per week
 $58.17 \text{ C.Y.} / 3 \text{ C.Y.} = 20 \text{ Bins}$
If Picked Up Once a Week
 20 Bins / 7 Days per Week = 3 Bins required if picked up daily

33. Proposed signage will consist of monument style signs located at project entries.
34. Rooftop details have been provided.
35. Interior elevations have been provided.

Letter Dated September 8, 2005

PLANNING DIVISION COMMENTS

Comments 1 – 8

While this development proposal is not consistent with the City's current land use plan, Fairfield believes this proposal is supported by chapter 2 section 2.6 (Land Use Principals and Policies) of the General Plan. Specifically, the Guiding Principle and Implementing Policies noted within sec. 2.6.b. Jobs/Housing Relationship.

The business park environment of the subject property is precisely the reason for our residential development proposal. Co-Locating residential units within a business park environment keeps people in proximity to employment centers and reduces commuter traffic. This proposed development would provide the City of Milpitas with needed rental and for-sale housing while utilizing existing infrastructure and without eliminating habitat or open space areas within the City.

In addition to job proximity and new housing benefit, the site is also near public transit (VTA & Bus), freeway access, shopping and recreational opportunities.

Fairfield is in the process of finalizing a risk assessment of the adjacent businesses and has not yet identified any hazardous materials adjacent to the subject property. I will provide the noted risk assessment to you for review upon completion.

Fairfield is in agreement with staff regarding the preparation of a full EIR. This report and associated documents are currently being prepared.

FIRE DEPARTMENT COMMENTS

1. Turnouts have been accommodated as requested.
2. Site has been modified to accommodate 150' fire reach.
3. Site has been modified to accommodate required turning radii.
4. Distance between the townhome access points along Murphy Ranch Road has been extended as requested. EVA opportunities now exist between the apartment and townhome parcels.
5. Overhead power lines will be undergrounded.
6. The fire access road between the apartments and townhomes has been modified in accordance with fire requirements.
7. Site has been modified to accommodate the noted 35' setback.
8. A Risk Assessment for the property is in process and will be submitted to staff upon completion.

ENGINEERING DIVISION COMMENTS

Stormwater Control Plan Comments

1. HMP requirement noted
2. Stormwater Control Plan has been modified in accordance with the latest version of the guidebook.
3. BMP's have been addressed.
4. Landscape infiltration has been utilized as much as possible.
5. Comments noted
6. BMP maintenance noted.
7. C.3 requirements and associated certifications noted.

TRAFFIC COMMENTS

Frontage Improvements to Both Developments on Murphy Ranch Road

1. A median island has been designed in Murphy Ranch Road
2. Driveways have been aligned as noted.
3. Pedestrian scale lighting will be provided throughout the development.
4. Emergency access has been provided throughout the site.

Apartment Complex Access

1. The parking garage will provide parking for prospective tenants, guests and residents.
2. The Technology Drive access and alignment have been modified.
3. Pedestrian access is provided to all points on-site and to the public right of way. Emergency access is provided through the garage, as well as, an emergency access road that circles the site.
4. The roadway provided between the two housing types is for emergency access only.

Townhome Access

1. This access has been modified as noted.

GENERAL UTILITY COMMENTS

1. Water Supply Assessment is in process.
2. Comment addressed as noted.
3. Fees noted
4. Comments noted
5. Recycled water comments noted and will be incorporated into the plan.

GENERAL COMMENTS

1. Title report included
2. Technology drive has been designed as noted.
3. Six foot sidewalk has been designed as noted.
4. All turning movements have been designed in accordance with the appropriate requirements.
5. Fee comments noted
6. Fee comments noted
7. All trash and recyclable debris will be tossed by residents into separate trash and recyclable chutes, which appear on each floor level. All trash / recycling chute

access doors are to be handicap accessible and 16" square on all levels. Two dedicated trash collection rooms at the ground level will collect the wastes on 3 cubic yard bins. These rollaway bins will be delivered by a scout truck to an on site compactor 7 days a week. Frequency was derived from city zoning code requirement V-200-3.40 of 34 lbs. of trash per dwelling unit per week and 7 lbs of recycle trash per dwelling unit per week. The trash collection plan was coordinated with the Utility Engineering Section of Milpitas with Ms. Leslie Stobbe on Dec. 28, 2005.

Rollaway bins and compactor will be provided by management. Bins to be trainable for delivery to compactor and have bottom pocket channels to allow for conventional front loading dumping equipment. Large items disposed of by residents that will not fit in chutes will be collected by management and privately removed off-site.

8. The Hetch Hetchy ROW has been designed into the project.
9. A joint use agreement for the Hetch Hetchy ROW is in process.
10. Access to the Coyote Creek trail system will be provided.
11. It is anticipated that the park area will be primarily utilized by residents of the proposed development and employees of surrounding businesses. Therefore, in-lieu of providing a parking lot, Fairfield believes that maximizing the turf and useable open space of the park area is a better is a better land use.
12. Plans will be process with both the SF PUC and Santa Clara Valley Water District.
13. Vehicular access will be maintained to the City's pump station.
14. Plans will be processed with the noted agencies.

ARCHITECTURAL COMMENTS

Comments 1 – 27

All comments have been acknowledged; Comments affecting site design have been addressed; others will be addressed during construction drawing preparation.

ACCESSIBILITY

Comments 28 – 39

All comments affecting site design have been addressed; others will be addressed during construction drawing preparation

STRUCTURAL

40. Comment will be addressed during construction drawing preparation.

ENGINEERING

Comments 41 – 45

All comments affecting site design have been addressed; others will be addressed during construction drawing preparation

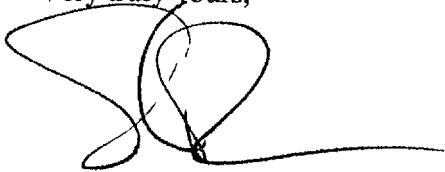
ELECTRICAL

Comments 46 - 48

All comments affecting site design have been addressed; others will be addressed during construction drawing preparation

Fairfield Residential believes that this application resubmittal has addressed your initial comments and look forward to your response. Please contact me if you have any questions or require additional information.

Very truly yours,

A handwritten signature in black ink, consisting of a large, stylized 'S' followed by a horizontal line extending to the right.

Shon E. Finch
Fairfield Residential

SEWER NEEDS ASSESSMENT (For Applicants - Planning Review)

The Sewer Needs Assessment must be submitted for all development Applications. Please keep a copy of this completed questionnaire for your files. If you need assistance in filling out the questionnaire, call Paramjit Uppal at (408) 586-3351. Please return this completed form to:

City of Milpitas - Planning and Neighborhood Preservation,
455 E. Calaveras Boulevard, Milpitas, CA 95035

Planning Application No.: _____ Assessor's Parcel Number (APN): 086-01-041/086-01-042

Total Area of this APN: 21.73 AC. Total Area To be Occupied Under Application: 21.73 AC.

Site Address, if available: 1001 MURPHY RANCH ROAD

Contact Person/Title: FAIRFIELD RESIDENTIAL Phone/email address: (858) 457-2123
SHON FINCH SFINCH@FFRES.COM

Current Zoning: MP (INDUSTRIAL PARK) Proposed Zoning (if applicable): PLANNED DEVELOPMENT

A. TYPE OF BUSINESS that will occupy this building (Describe type of business and possible equipment, processes, products or services involved).

MULTI FAMILY RESIDENTIAL

B. APPLICATION DATA

1. Describe the effect of this business on City water supply demand (quantity of water use) and the amount of sewage discharge.

659 RESIDENTIAL UNITS (285 TOWNHOMES + 374 APARTMENTS)

TOTAL SEWER FLOWS = 0.28 MGD

2. What is the square footage (in square feet) involved in this application? 21.73(AC) S.F.

3. Anticipated square footage breakdown of your proposed facility or tenant space:

Office/Bathroom	_____ S.F.	Manufacturing	_____ S.F.
Warehouse	_____ S.F.	Residential	<u>659</u> # of DU
Restaurant	_____ S.F.	Other	_____ S.F.

4. The building area has been previously occupied. (Circle one)

5. Name of current co-tenant(s). If any NONE

Note: Co-tenant is defined as those who share the domestic water service with you.

C. TOTAL ESTIMATED WATER USES for this application (in gpd, gallons per day)

Bathroom	_____ gpd	Steam Cleaning	_____ gpd	Others:	<u>659 UNITS</u>	<u>1.92</u> MGD
Car washing	_____ gpd	Manufacturing	_____ gpd			_____ gpd
Cooking	_____ gpd	Product Ingredient	_____ gpd			_____ gpd
Cooling Towers	_____ gpd	Steam Cleaning	_____ gpd			_____ gpd

The information contained herein is familiar to me and to the best of my knowledge, accurate and complete. A supplemental Building Sewer Needs Questionnaire will also be required at the time of Building Permit application which will serve as the basis for fees.

Applicant: JASON NERI, CEG

Print Name

Jason Neri
Signature

PROJECT MANAGER

Title

3/9/06
Date



Submit with
Stormwater
Control Plan

City of Milpitas

C.3 Data Form

When Should This Form Be Completed?

Complete this form if any of the following applies:

- > Project was "deemed complete" between Oct. 15, 2003 – Oct. 5, 2005 and has added or replaced an impervious surface area of 1 acre (43,500 square feet) or more.
- > Project was "deemed complete" after Oct. 6, 2005 and has added or replaced an impervious surface area of 10,000 square feet or more and falls within the Group 2A categories (see below).

Note: For public roadways, include new impervious surface areas, but not replaced impervious surface areas.

What is an Impervious Surface?

Any surface on or above ground that prevents the infiltration or passage of water into the soil. Impervious surfaces include, but are not limited to, non-absorbent rooftops, paved or covered patios, driveways, parking lots, paved walkways, compacted soil or rock, and streets. It includes streets, roads, highways, and freeways that are under the City of Milpitas' jurisdiction and any newly constructed paved surface used primarily for the transportation of automobiles, trucks, motorcycles, and other motorized vehicles. Excluded from this category are public sidewalks, bicycle lanes, trails, bridge accessories, guardrails, and landscape features.

How To Determine the Date "Deemed Complete"

Private projects are "deemed complete" when the list of requirements needed for planning application submittals (provided by the Planning Division) is complete and ready to be processed. This list includes the Stormwater Control Plan. Public projects are "deemed complete" when City Council approves design funding.

What are the Group 2A Categories?

- > Gas stations;
- > Auto wrecking yards;
- > Loading dock areas and surface parking lots containing more than 10,000 square feet or more of impervious surface area;
- > Vehicle or equipment maintenance areas (including washing and repair), outdoor handling or storage of waste or hazardous materials, outdoor manufacturing area(s), outdoor food handling or processing, outdoor animal care, outdoor horticultural activities, and various other industrial and commercial uses where potential pollutant loading cannot be satisfactorily mitigated through other post-construction source control and site design practices.

For More Information

Contact the Planning Division at 408-586-3279.

Date: 3/10/06

APN # 0 8 6 - 0 1 - 0 4 1
0 8 6 - 0 1 - 0 4 2

Project Name: MURPHY RANCH

Project Description: 659 MULTIFAMILY UNITS

Project Location (Address): 1001 MURPHY RANCH ROAD

Applicant Info (Name, Address, Phone #): FAIRFIELD RESIDENTIAL

5510 MOREHOUSE DRIVE, SAN DIEGO CA 92121 (SUITE 200) (858) 457-2123

Contractor / Designer Info (Name, Company, Address, Phone #): CARLSON BARBEE GIBSON

6111 BOLLINGER CANYON ROAD, SUITE 100

SAN RAMON, CA 94583 (925) 866-0322

1. ☐ Public ☒ Private

2. ☒ New ☐ Redevelopment

3. Project Type (select one): ☒ Commercial/Industrial ☐ Restaurant / Retail
☐ Mixed Use ☐ Shopping Center
☐ Residential ☒ Streets / Roads / Highways

4. Impervious Surface Area (SF = Square Feet):

a. Entire Site Size

21.73 AC. SF

b. EXISTING Impervious Surface Area

0 AC. SF

c. EXISTING Impervious Surface Area to be Removed

0 AC. SF

d. NEW Impervious Surface Area to be Added or Replaced	15.45 AC.	SF
e. TOTAL Impervious Surface Area (b-c+d)	15.45 AC.	SF

50% Rule (only applies to existing developments NOT subject to stormwater treatment measures):

f. Percent Impervious Surface Area in Final Design (e/a x 100%)	71	%
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For Significant Redevelopments (check appropriate box):

- ☐ If 50% or more, the entire project must be included in the treatment measure design.
☐ If less than 50%, only that affected portion must be included in the treatment measure design.

g. Total Land Disturbance During Construction Includes clearing, grading, and excavating.	21.73	SF
---	-------	----

5. Pesticide Reduction Measures Used (Check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> None - Doesn't Apply | <input type="checkbox"/> Environmental Measures |
| <input type="checkbox"/> Education | <input type="checkbox"/> Biological Measures |
| <input type="checkbox"/> Conditions of Approval | <input type="checkbox"/> Chemical Measures |
| <input type="checkbox"/> Physical and Mechanical Horticultural Measures | <input type="checkbox"/> Other _____ |

6. Stormwater Control Measures Used (Check the appropriate boxes that apply to the project):

SITE DESIGN

- ☐ Minimize land disturbance
☐ Minimize impervious surfaces
☒ Minimum-impact street design
☒ Minimum-impact driveway or parking lot design
☒ Cluster structures/pavement
☐ Disconnect downspouts
☐ Alternative driveway design
☐ Microdetention in landscape
☐ Preserve open space: _____ sq. ft.
☐ Protect riparian and wetland areas, riparian buffers (setback from top of bank: _____ ft.)
☐ Minimize change in runoff hydrograph
☐ Other: _____

STORMWATER TREATMENT

(TO BE DETERMINED)

- ☐ Bioretention
☐ Drain Insert
☐ Exfiltration Trench
☐ Extended Detention Basin
☐ Hydrodynamic Separators
☐ Infiltration Basin
☐ Infiltration Trench
☐ Media Filter
☐ Multiple Systems
☐ Planter Boxes
☐ Porous Pavement
☐ Retention/Irrigation
☐ Roof Gardens
☐ Underground Detention Systems
☐ Vegetated Buffer Strip
☐ Vegetated Swale
☐ Vortex Separator*
☐ Water Quality Inlet
☐ Wet Pond
☐ Wet Vault
☐ Wetland
☐ Other: _____

SOURCE CONTROLS

- ☐ Alternative building materials
☐ Wash area/racks, drain to sanitary sewer
☐ Covered dumpster area, drain to sanitary sewer
☒ Swimming pool/fountain drain to sanitary sewer
☒ Beneficial landscaping (minimizes irrigation, runoff, pesticides and fertilizers; promotes treatment)
☒ Outdoor material storage protection
☐ Covers, drains for loading docks, maintenance bays, fueling areas
☒ Maintenance (street sweeping, catch basin cleaning)
☐ Permeable pavement
☐ Storm Drain Signage
☐ Green or Blue Roofs
☐ Other: _____

FOR CITY STAFF ONLY

PRIVATE PROJECTS	PUBLIC PROJECTS
Planning: Date Received: _____ By (Name): _____ Permit #: _____ Project #, if applicable: _____ Master Permit #, if applicable: _____ Date Entered into Database: _____ By (Name): _____	Design & Construction Engineering / Special Projects: Date Received: _____ By (Name): _____ Permit #: _____ Project #, if applicable: _____ Master Permit #, if applicable: _____ Date Entered into Database: _____ By (Name): _____

1.

REGULAR

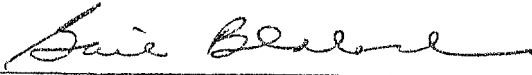
NUMBER: 38.727

TITLE: AN ORDINANCE OF THE CITY OF MILPITAS ADDING CHAPTER 103, TITLE XI OF THE MILPITAS MUNICIPAL CODE TO APPROVE THE DEVELOPMENT AGREEMENT WITH OCTEL COMMUNICATION CORPORATION FOR SPECIFIED PROPERTY WITHIN THE MILPITAS BUSINESS PARK

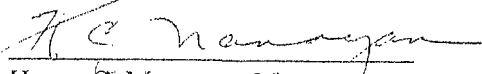
HISTORY: This Ordinance was introduced at a meeting of the City Council of the City of Milpitas on August 5, 1997, by motion of Councilmember Lawson, and was finally adopted on August 19, 1997, upon the motion of Councilmember Livengood by the following vote:

AYES:	(5)	Mayor Manayan and Councilmembers Dixon, Lawson, Lee, and Livengood
NOES:	(0)	None
ABSENT:	(0)	None
ABSTAIN:	(0)	None

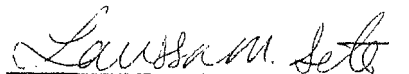
ATTEST:


Gail Blalock, City Clerk

APPROVED:


Henry C. Manayan, Mayor

APPROVED AS TO FORM:


for Steve Mattos, City Attorney

ORDAINING CLAUSE:

THE CITY COUNCIL OF THE CITY OF MILPITAS DOES ORDAIN AS FOLLOWS:

ORDINANCE NO. 38.727

**AN ORDINANCE OF THE CITY OF MILPITAS, COUNTY OF SANTA CLARA,
APPROVING THE DEVELOPMENT AGREEMENT WITH
OCTEL COMMUNICATION CORPORATION FOR
SPECIFIED PROPERTY WITHIN THE MILPITAS BUSINESS PARK**

RECITALS

WHEREAS, by Resolution No. 6680 the City Council of the City of Milpitas has certified a final Environmental Impact Report for the Milpitas Business Park Development Project;

WHEREAS, pursuant to Government Code §65867.5, the City Council hereby finds the attached Development Agreement consistent with the Milpitas General Plan and the applicable Redevelopment Plan;

WHEREAS, the City Council also finds that the Master Plan set forth in the Development Agreement is consistent with the Milpitas General Plan,

NOW, THEREFORE, the City Council of the City of Milpitas does hereby ordain as follows:

1. The City Council of the City of Milpitas does hereby approve the Development Agreement between the City of Milpitas and Octel Communication Corporation attached hereto as Exhibit 1.
2. The City Council further authorizes the Mayor to sign the Development Agreement.

Tom

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

City of Milpitas
City Hall
455 E. Calaveras Boulevard
Milpitas, California 95035

(SPACE ABOVE LINE FOR RECORDER'S USE ONLY)

DEVELOPMENT AGREEMENT

BETWEEN

THE CITY OF MILPITAS,
a municipal corporation

AND

OCTEL COMMUNICATIONS CORPORATION,
a Delaware corporation

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered as of the 18th day of September, 1997 ("Effective Date") by and between THE CITY OF MILPITAS ("City"), a California municipal corporation, and OCTEL COMMUNICATIONS CORPORATION, a Delaware corporation

THE PARTIES ENTER THIS AGREEMENT on the basis of the following facts, understandings and intentions:

A. Statutory Authority. Section 65364 et seq. of the California Government Code authorizes City to establish procedures to enter binding development agreements with persons having legal or equitable interests in real property located within the City for development of the property.

B. City Legislative Authority. Resolution No. 6642, adopted by the City Council ("City Council") of the City on May 6, 1997, establishes City's own legislative authority and procedure for review and approval of development agreements.

C. Definitions of Terms. Owner is the legal owner of the individual parcels of real property ("Property") governed by this Agreement, which, together with the property owned by the other owners of the Milpitas Business Park, comprises an approximately 435-acre site located at the southwesterly corner of the intersection of Interstate Highway 880 and State Highway 237 in the City of Milpitas. The Property is further described and identified in Exhibit "A", attached hereto and incorporated by this reference. The obligations set forth in this Agreement are intended to bind City and Owner individually, and to run with Owner's parcel(s) of the Property. City proposes to enact and enter similar statutory development agreements, affecting most of the Property within the Milpitas Business Park, in a single regulatory program. This Agreement contains general terms which are the same for each Owner, but for clarity, the separate obligations for Traffic Impact Fee ("TIF") payments and other means of mitigating vehicular traffic congestion, undertaken between each Owner and City, are set forth in individual documents as a matter of administrative and interpretive convenience. The individual financial obligations and development rights of each respective Owner separately are specified in the Master Plan ("Master Plan") attached hereto as Exhibit "B" and incorporated by this reference.

D. Underlying City Policies. Owner, together with the other owners (sometimes "Owners" herein), intends during the next several years to build out a

master-planned, integrated multi-owner corporate facility ("Project") on the Property and in the Milpitas Business Park within the policies and limits governing usable space allocations expressed in the 1994 Milpitas General Plan ("General Plan"), the Redevelopment Plan for Redevelopment Project Area 1-Amendment #2 ("Redevelopment Plan") and the current Milpitas zoning ordinances, other Milpitas Municipal Code regulations, and formal written land use, traffic mitigation and infrastructure funding policies (collectively "Land Use Regulations"). This Agreement shall be interpreted and administered exclusively in accordance with the General Plan, Redevelopment Plan and Land Use Regulations current as of the Effective Date hereof. The Master Plan is a conceptual designation of land use categories anticipating rehabilitation of existing buildings and development of new buildings on the Property, specifying locations and development densities for future "Office", "Research and Development", "Hotel" and "Commercial" land uses. The Master Plan specifies the Project's land uses, authorized development densities and maximum traffic mitigation fees. The Project and Master Plan were analyzed for their potential environmental consequences in the Milpitas Business Park Subsequent Environmental Impact Report ("EIR"), which was prepared, considered and certified by City as complete in accordance with the requirements of the California Environmental Quality Act ("CEQA") on August 5, 1997.

E. Intended Effects of Agreement. Owner has requested this Agreement in order better to ensure that the Project will be completed pursuant to the land use and economic development policies set forth in the General Plan, Redevelopment Plan, Land Use Regulations and Master Plan, by vesting all of the applicable existing land use policies established therein which are current as of the Effective Date hereof. City proposes to impose a Traffic Impact Fee ("TIF") upon Project Properties, in order to obtain revenues payable at the time of new future Project development approvals, which likely will enable City to mitigate Project traffic effects without recourse to municipal financing mechanisms or diversions of City's General Fund revenues for traffic mitigation purposes. This Agreement authorizes Owner individually to implement the Project and Master Plan on Owner's Property, subject to future City land use regulatory decisions which are consistent with the General Plan, Redevelopment Plan, Land Use Regulations, Master Plan and this Agreement.

F. Public Policy Justification for Enacting Development Agreement. Pursuant to the legislative discretion granted to City by Government Code Section 65864, et seq. and City Resolution No. 6642, City is authorized to enact land use regulations, including this Agreement, which exercise currently and prospectively the City's legislative discretion to control development of the Project and to mitigate its effects on local and regional traffic congestion. City's principal public policy justifications for enacting this

Agreement are distinct from those more commonly justifying statutory development agreements which grant new development entitlements to raw, undeveloped land, and can be summarized as follows:

1) Since the early 1980's, the General Plan, Redevelopment Plan and Land Use Regulations have established completion of the Milpitas Business Park as an important economic, social and land use planning objective of City. City imposed substantial financial burdens on the Property, ensuring that all projected traffic congestion and other consequences of full buildout will be fully mitigated, and that the Milpitas Business Park will not impose unmitigated traffic congestion burdens on the regional infrastructure system. City and Owners subsequently have invested tens of millions of dollars to build public and private infrastructure improvements necessary to orderly, timely and fully mitigated buildout of the Milpitas Business Park, in order to ensure that City's public policy objectives will be achieved.

2) For roughly fifteen years, Silicon Valley jurisdictions (including City) have adhered to regional development density limits ("Floor Area Ratios" or "FAR") limited to 0.35 FAR jointly established as the basis for planning and financing infrastructure and rationalizing the regional "jobs/housing balance". The Milpitas Business Park was designed and entitled at a 0.35 FAR, and has provided primarily at private expense the excess infrastructure and traffic capacity necessary to sustain full buildout at that density. During the past few years, however, some nearby jurisdictions have approved development projects which greatly exceed that regional maximum, including some very large projects at 0.55 FAR (a 57% increase in density) and over 0.70 FAR (a 100% increase in density), which have contributed far less private resources to traffic mitigation than the Milpitas Business Park has contributed. The attendant increase in regional vehicular traffic congestion has been rapid and, due to the extraordinary development densities, regional traffic congestion concentrated at the Highway 237/Interstate 880 intersection threatens to become not only a potent source of regional political opposition to continued economic growth, but also a source of legislatively or judicially-imposed legal limits on future economic development and redevelopment, including completion of the Milpitas Business Park. Land use planning and infrastructure funding decisions originating outside Milpitas, therefore, threaten to cause traffic congestion which could prevent or delay completion of the Milpitas Business Park and attainment of City's public policy objectives.

3) This Agreement is intended by City to help ensure that the orderly, timely and fully-mitigated implementation of the Project will occur as originally anticipated, despite deterioration in regional traffic congestion caused by factors external to the Project. The terms of this Agreement authorize imposition of substantial additional

financial burdens on the Property, for purposes of mitigating traffic congestion, and place limits on those financial burdens, in order to protect and encourage timely completion of the Project. City's assistance in implementation of the Project therefore is motivated by City's desire to protect the historic public and private investments made to attain City's longstanding goal of completion of the Milpitas Business Park, against externally-imposed obstacles in the form of regional traffic congestion and resultant mitigation cost burdens.

4) This situation differs fundamentally from more common instances in which landowners seek new or increased development entitlements for vacant land, in return for specified short-term public policy and financial inducements. The McCarthy Ranch development agreement is an example of this more typical pattern, and is distinguished from this Agreement by the factors summarized herein. The most notable distinction is the fact that the Property lies within a Redevelopment Project Area, in which City is authorized by the California Constitution, by state law and by its own Redevelopment Plan to reinvest property tax increment revenues in order to ensure completion of the Milpitas Business Park and therefore implementation of the Redevelopment Plan.

5) Development of vacant portions of the Property and redevelopment of improved portions of the Project is a large-scale undertaking involving major capital investments by Owners and City, with development occurring in phases over several years, the value and integrity of which public and private investments deserves the protection of the "vested" land use entitlements provided in this Agreement. A substantial public policy benefit is conferred upon the public and City by thus increasing the economic certainty with which streets and related infrastructure improvements affected by the Project can be planned, financed and built.

6) The Owners previously have dedicated for public use very substantial portions of the Property, valued at several million dollars, particularly for public street and utility improvements.

7) The Owners previously have prosecuted litigation at no cost to City, conferring upon the City and the public generally the beneficial effect that serious adverse impacts to Milpitas-area street, intersection and freeway congestion will be partly mitigated by payments exceeding Ten Million Dollars (\$10 Million) from private sources.

8) The Master Plan describes Project-funded public infrastructure improvements which actually will decrease traffic congestion from current levels within

and near the Milpitas Business Park, and will enhance traffic circulation beyond the extent necessary to mitigate Project-generated traffic.

9) Despite regional traffic congestion caused by infrastructure deficiencies or traffic generated outside of Milpitas, implementation of this Agreement will benefit City, Owners and the public generally, and will provide to all parties a relatively permanent plan for rapid and economically successful development of the Property, in the process attaining the combined social, employment, economic and planning objectives of implementation of City's General Plan, Redevelopment Plan and Land Use Regulations.

G. Agreement's Intended Benefits to City. City is willing to enact and enter this Agreement, for the fundamental policy reasons set forth in the General plan, Redevelopment Plan and Land Use Regulations, and for the additional reasons summarized herein and in Resolution No. 6642, particularly including the following: (i) to eliminate uncertainty in the comprehensive planning of large-scale projects in the City, such as the Project; (ii) to secure early, orderly development and progressive fiscal benefits for public services, infrastructure improvements, employment and facilities planning in the City; (iii) to meet the goals and objectives of the General Plan and Redevelopment Plan; (iv) to consolidate, for Owners' and City's benefit, several associated land uses into the unified, modern, high-prestige research and office complex represented by the Master Plan, within City's jurisdiction, at a location well served by regional highways and local thoroughfares; (v) to protect Owners from additional infrastructure funding burdens which could be imposed unfairly due to traffic congestion resulting from growth occurring elsewhere, both within and outside Milpitas, (vi) to protect the Project from other municipally-imposed traffic mitigation costs, taxes, assessments, fees and other financial burdens which could place the Project at a competitive disadvantage with similar development projects elsewhere, and (vii) to encourage and accelerate early buildout of the Property by establishing the Project and Master Plan as the parties' joint development objective, and by quantifying the development potential and traffic mitigation cost burdens to be borne by individual parcels within the Property.

H. Finding: Legislative Validity. For the foregoing reasons, based upon the facts summarized herein and elsewhere in the record of City deliberation hereon, City hereby finds and determines that the public policy benefits conferred by this Agreement upon City and the general public are substantial, and amply justify enacting this Agreement as a legislative act embodying the current and prospective exercise of City's legislative discretion, in furtherance of the public health, safety and welfare.

I. Finding: Contractual Validity. For the foregoing reasons, based upon the facts summarized herein and elsewhere in the record of deliberation on this Agreement, City hereby finds and determines that the contractual consideration conferred by this Agreement upon City and the general public is substantial, and amply justifies entering into and implementing this Agreement as a legally binding contract embodying the exercise of City's inherent "police powers", in furtherance of the public health, safety and welfare.

J. Agreement's Intended Benefits to Owner. Owner proposes to enter into this Agreement in order to obtain a legal assurance from City that the Project and Owner's Property may be developed, constructed, redeveloped, completed and used pursuant to the General Plan, Redevelopment Plan and Master Plan, in accordance with the development policies and congestion mitigation cost limitations expressed herein, and protected from the risk of additional general or special taxes, assessments, fees levied to finance additional traffic congestion mitigation programs, and other municipally-imposed traffic mitigation costs whatsoever, except those expressly authorized herein.

K. CEQA and General Plan Compliance; Planning Commission. On July 23, 1997, at a duly noticed public hearing on this Agreement, City's Planning Commission determined that the EIR satisfies CEQA prerequisites for consideration of this Agreement, determined that this Agreement is consistent with the City's General Plan, and recommended that the City Council enact this Agreement.

L. CEQA and General Plan Compliance; City Council. On August 5, 1997, at a duly noticed public hearing on this Agreement, the City Council determined that the EIR satisfies CEQA prerequisites for consideration of this Agreement, found this Agreement to be consistent with the City's General Plan, and introduced Ordinance No. 38.727, approving this Agreement.

M. Enactment. On August 19, 1997, the City Council adopted Ordinance No. 38.727, enacting this Agreement.

NOW, THEREFORE, pursuant to the authority contained in Section 65864 et seq. of the California Government Code and City Resolution No. 6642, and in consideration of the mutual covenants and promises of the parties, the parties agree as follows:

1. Development of The Property.

1.1 Master Plan for Development. Owner shall have the right to develop, rehabilitate and redevelop the Property in accordance with the provisions of this

Agreement. The authorized uses of the Property, the range of authorized development density, the range of heights and sizes of proposed buildings, and the maximum limits on City-imposed TIF payments and all other costs imposed by City for traffic congestion mitigation ("Traffic Mitigation") purposes affecting the Property, shall be exclusively those provided in the General Plan, Redevelopment Plan, Land Use Regulations and Master Plan as of the Effective Date of this Agreement. "Traffic Mitigation", as used herein, means preventing, reducing or otherwise lessening the adverse effects of Project visitors' and employees' vehicular traffic on the system of major streets, freeways and intersections serving the Project, and shall not include "onsite" traffic circulation improvements immediately contiguous to the Property which enhance primarily the safety, capacity and convenience of vehicular ingress and egress to, and circulation upon, the Property itself. The Master Plan illustrates current Property ownership patterns. Owners individually or collectively may apply for and City may approve different parcelization, lot sizes and dimensions of the Property during the term of this Agreement, provided that the ratio of development density to TIF payments within each major ownership parcel shown in the Master Plan shall remain constant. New parcels subdivided within the parcels shown on the Master Plan shall allocate the Master Plan development densities and TIF payment obligations together, pro rata, among the subdivided parcels in accordance with the Master Plan limits. Development densities and TIF payments for future subdivided parcels within the Property shall not exceed the totals for the Property specified in the Master Plan absent an amendment to this Agreement. No amendment of another owner's authorized development density or TIF payment obligation shall affect Owner's rights or obligations hereunder.

1.2 Schedule for Immediate Construction. Previous investments by City and Owners in public infrastructure improvements have created immediately available traffic capacity sufficient for development of portions of the Project. The Owners collectively anticipate developing or redeveloping at least Six Hundred Thousand (600,000) square feet of new floor area ("Immediate Construction") within Five (5) years after the Effective Date. Immediate Construction, as used herein, means the enclosed building area represented by building permits issued by City for the Milpitas Business Park after the Effective Date hereof.

1.3 Limitation on Dedications and Fees. City shall not require, impose, accept or condition future development upon any reservation or dedication of Property for Traffic Mitigation purposes, beyond those dedications completed before the Effective Date hereof, absent the written consent of Owner. Future implementation of the Project will be subject to other discretionary approvals by City, which will establish the precise individual parcels and lot dimensions, precise physical configurations, dimensions, and locations, architectural features and sizes of buildings on the Property. Nothing contained

herein shall restrict City's discretion to amend, approve or conditionally approve Project features consistent with the General Plan, Land Use Regulations and Master Plan, provided that City shall not condition approval of Project features, including development of vacant Property and redevelopment of improved property, upon any obligation, Property dedication or payment of any monies exceeding the TIF amounts set forth in the Master Plan and this Agreement, for Traffic Mitigation purposes. In particular, City shall not levy, charge or impose any general or special tax, special assessment, dedication of any property right, exaction, in-lieu contribution, fee or other obligation of any kind whatsoever against the Property for Traffic Mitigation purposes, except as authorized by this Agreement. The limitation stated in this Section 1.3 shall not affect City's authority and discretion to impose against the Property (a) normal and reasonable uniformly applicable fees charged for the administrative costs of providing City services actually used by the Project, (b) the TIF payments set forth in the Master Plan, (c) service, utility stand-by and connection fees authorized by state law and City ordinances, which apply uniformly throughout the City of Milpitas without a disproportionate economic effect on the Property, and (d) increases in ad valorem real property taxes or tax rates authorized by state law, which apply uniformly throughout the City of Milpitas without a disproportionate economic effect on the Property.

1.4 Present Right to Develop Without Delay. Subject to the provisions of this Agreement, City hereby grants to Owner the present vested right to develop and construct all improvements on the Property in accordance with the Master Plan, General Plan, Redevelopment Plan and Land Use Regulations current as of the Effective Date. No future modification of the General Plan, Redevelopment Plan or Land Use Regulations shall apply to the Property which, for Traffic Mitigation purposes, purports to (i) limit the range, rate or amount of possible development or redevelopment on the Property, or (ii) impose new fees, exactions, moratoria, dedication requirements, special assessments or special taxes secured by the Property, upon the development, redevelopment, occupancy or use of the Property or Property improvements, other than as provided in the Master Plan and this Agreement. This Agreement shall be interpreted and administered so that complete development or redevelopment of the Property may be achieved irrespective of future moratoria enacted for Traffic Mitigation purposes, building permit limits enacted for Traffic Mitigation purposes, and all other measures enacted for Traffic Mitigation purposes, which would have the effect of delaying, slowing or preventing timely completion of the Project before expiration of this Agreement. No Traffic Mitigation moratorium enacted formally or administered informally by City shall delay implementation of the Project, with the sole exception of a moratorium authorized or mandated by state or federal law, which complies with all statutory prerequisites for emergency application to the Property. Nothing stated herein shall prevent or preclude City from adopting any other citywide General Plan amendments, zoning measures, taxes,

fees, special assessments or other land use regulations, provided that they are applied and enforced in a manner consistent with the Master Plan and the terms of this Agreement.

1.5 Future Development Approvals. Owner's rights to develop and improve the Property shall be subject only to City's approval of discretionary and ministerial land use approvals and permits requested by Owner pursuant to the Land Use Regulations in effect as of the Effective Date. Owners' rights hereunder also shall be subject to Owners' compliance with all reasonable conditions of approval, including architectural review approval conditions, imposed consistent with the Land Use Regulations, the Master Plan and this Agreement. The scope of development stated in the Master Plan shall govern Owner's proportionate costs of all on-site and off-site improvements to be constructed to serve the Property for street widths, or other road and street improvements, right-of-way acquisitions and air quality mitigation measures. Absent Owner's consent, City shall not amend or reallocate development densities or TIF payment obligations from those set forth in the Master Plan.

1.6 Prerequisite Street Improvements. As soon as it is feasible to do so, City shall use its best efforts to complete as expeditiously as reasonably possible its planned acquisition, widening, improvements to and opening of Alder Drive and Tasman Drive, to the ultimate plan lines shown on the Master Plan, at no cost to Owner. City acknowledges the importance of completing these major Project-serving arterials and intersections before any closure of the Highway 237/Interstate 880 intersection and its approaches occurs due to reconstruction work. City therefore shall use its best efforts to use, schedule and manage all City-controlled improvements to the Highway 237/Interstate 880, Tasman and Alder Drives and other major Project-serving streets so as to minimize adverse traffic congestion effects on the Project resulting from Highway 237/Interstate 880 improvements.

1.7 Cooperation in Obtaining Allocation of Utilities. City shall cooperate with Owner in Owner's efforts timely to obtain and reserve from the appropriate utility companies the allocation of sufficient utilities, including electricity, cable and other electronic transmissions, gas, water, reclaimed water, storm drainage and sewerage service, capacity and facilities, for complete development of the Property in accordance with the terms hereof, throughout the Term of this Agreement. City shall not enact, apply or enforce any service extension or connection moratorium, service extension or connection fee or prohibition upon new utility connections or service to the Project for Traffic Mitigation purposes, and shall not administer utility services so as to delay or prevent development or occupancy of the Property pursuant to the Master Plan.

1.8 Payment of TIF. Owner acknowledges that City is concurrently passing a Traffic Impact Fee ordinance covering the Property and requiring the payment of designated traffic mitigation fees in an amount and on a schedule as prescribed therein. The TIF ordinance shall be deemed part of the City's Land Use Regulations applicable to the Property. Owner agrees that the TIF ordinance is a valid and binding ordinance of City, and agrees to comply fully with the TIF ordinance, and not to challenge the TIF ordinance or any provision thereof in court. Owner acknowledges that the TIF ordinance provides for an automatic escalator of fees pursuant to a specified index described therein.

1.9 Owner's Support of Public Transportation. As soon as LRT service is established between downtown San Jose and the Tasman Drive/Coyote Creek station, Owner shall actively support in concert with other Owners (contributing political and business community leadership and staff efforts) a public transportation system extension (for example, a bus or shuttle service) to serve the area bounded by McCarthy Ranch on the north to Montague Expressway on the south, and from Coyote Creek to Interstate 880. With the understanding that City will apply for federal, state and regional transportation funding for the program, Owner will promote a public transportation system linked to the LRT system and providing normal weekday commute service. Once service is established, Owner will join with other Owners and businesses in the described area to subsidize system operations for 50% of its annual cost. Thus, Owner's contribution in conjunction with that of other Owners and businesses in the described area shall match the contribution of other identified funding sources.

2. Effect of Agreement.

2.1 Effect of Subsequent State or Federal Laws or Regulations. If applicable state or federal laws or regulations affecting the Project, enacted after the Effective Date, are inconsistent with the Master Plan or the provisions of this Agreement, this Agreement shall be deemed modified or superseded only to the extent necessary to comply with the new state or federal laws or regulations. Notwithstanding any provision of this Agreement to the contrary, City may exercise its discretion to impose conditions upon any development approval for the Property which will enable City to comply with any federal or state law, regulation, or mandate which is in effect at the time the approval is sought, provided that the conditions imposed (i) are reasonably necessary to comply with any federal or state law, regulations or mandate which is in effect at the time the approval is sought; and (ii) are necessary to protect against a substantial threat to the City's health, safety and welfare, and (iii) impose no more than the reasonable minimum additional Traffic Mitigation cost and delay on Project completion. Nothing contained herein shall prevent Owner from challenging at Owner's sole expense, in a court of competent jurisdiction, a state or federal law or regulation preventing compliance with the

terms of this Agreement and, if the challenge is successful, this Agreement shall remain unmodified and in full force and effect. City shall have no duty to participate in any such litigation.

2.2 Credits for Future State or Federal Grants. If City receives state or federal grants for purposes of funding construction of the major roadway and other infrastructure improvements to be funded in whole or in part by the TIF, in excess of the amounts required to complete the construction after accounting for the Owner's TIF payments required pursuant to this Agreement, then City, after allocating sufficient funds to complete the construction, and after reimbursement to City and City's Redevelopment Agency for any of their funds used to fund the relevant construction, shall reimburse to Owner pro rata and in equal priority to other Owners within the Milpitas Business Park, from the available state or federal funds, the amount of Owner's TIF payments.

2.3 Effect of Future Discretionary City Decisions. This Agreement shall not be construed to limit the authority or obligation of City to hold convenient or necessary public hearings, to conduct all analyses required by CEQA, the State Planning Law, the Subdivision Map Act, City ordinances or any other applicable federal, state or local law or regulation. Furthermore, this Agreement does not limit the discretion of City or any of its officers or officials with regard to rules, regulations, ordinances or laws which require the exercise of discretion by any of its officers or officials, provided that the discretionary decisions reached are consistent with the Master Plan and this Agreement, and impose upon the Property no TIF costs or other costs or obligations for Traffic Mitigation purposes not authorized by the Master Plan and this Agreement.

3. Term. The term ("Term") of this Agreement shall commence on the Effective Date, and shall expire upon the fifth (5th) anniversary of the Effective Date, unless either of the following events occurs before expiration of the Term: (a) Owners collectively exceed the Immediate Construction level (600,000 square feet) within Five (5) years after the Effective Date, or (b) City fails to complete the Alder Drive and Tasman Drive improvements before closure of Project-serving major arterials, as described in Section 1.6, above. If either of the foregoing events occurs, the Term thereupon, without further action by City or Owner, shall be extended and shall expire on the tenth (10th) anniversary of the Effective Date. 9/18/97 9/18/2002

4. Consent Required to New Fees Requested by City or Other Jurisdictions. No new general or special taxes, assessments, dedication of any property right, exactions, in-lieu contributions, fees or other obligations of any kind whatsoever, levied or imposed by City or other governmental agencies for Traffic Mitigation purposes, including short-term Traffic Impact Assessment (TIA) fees, which are not set forth in the Master Plan or

are not in effect as of the Effective Date, shall be imposed on the Property absent the written consent of Owner. Notwithstanding the foregoing, (a) all portions of TIA fees, and other monetary exactions imposed to mitigate "onsite" Property access issues, and not for Traffic Mitigation purposes (defined in Section 1.1 above), shall be paid by Owner; (b) Owner shall be subject to TIA fees that may be levied following the original 5-year term of this Agreement; (c) Owner shall be subject to future countywide (including regional or subregional) Deficiency Plan or other fees imposed for Traffic Mitigation purposes by the City or by the Congestion Management Agency or any successor agency thereto, provided that Owner will receive a credit to the extent permitted by law against such fees for Owner's advance payments, if any, for improvements to Montague Expressway; and (d) Owner shall pay the actual costs of preparation of any required TIA.

5. Future Project Development Density Increases. Nothing contained in this Agreement shall prevent any Owner from applying for, or City from approving, future increases in the development densities set forth in the Master Plan or amendments to the land use designations and zoning categories represented in the Master Plan. No such density increase or land use amendments shall occur absent full and complete compliance with CEQA, appropriate revisions to or compliance with all applicable General Plan, Redevelopment Plan and Land Use Regulations, and imposition of appropriate traffic congestion and other mitigation programs.

6. Standard of Review of Ministerial and Discretionary Permits. All ministerial and discretionary permits required by Owner to develop the Property, including (i) road construction or encroachment permits; (ii) grading permits; (iii) building permits; (iv) certificates of occupancy; (v) amendments to the Project's subdivision boundaries; (vi) architectural review approvals; and (vii) reallocations among parcels of Master Plan development densities, shall be issued by City after City's review and approval of Owner's applications therefor, provided that City's review of the applications shall be limited to determining whether the following conditions are met:

(1) The application is complete and includes payment of all applicable administrative and staff processing fees, according to then-current City fee schedules, subject to the limits thereon set forth in this Agreement;

(2) The application complies with all federal and state regulatory requirements normally administered by City; and

(3) The application demonstrates that Owner has complied with the General Plan, Master Plan, applicable Land Use Regulations and all then-current

architectural, aesthetic and other uncoded City policies and practices as are applied normally citywide in comparable zone districts without a disproportionate economic effect on the Property.

7. Cooperation in Implementation. City and Owner shall cooperate with each other in a reasonable and expeditious manner, to complete all steps necessary to implementation of this Agreement and development of the Project, in particular in performing the following functions:

(a) Scheduling all required public hearings by the City Council and Planning Commission; and

(b) Submitting, processing and checking all maps, plans, land use permits, building plans and specifications and other plans relating to development of the Project filed by Owner or its nominees.

Owner, in a timely manner, shall provide City with all documents, applications, plans and other information necessary for City to carry out its obligations hereunder and to cause its planners, engineers and all other consultants to submit in a timely manner all necessary materials and documents. It is the parties' express intent to cooperate with one another and diligently work to implement all land use and building approvals for development of the Project in accordance with the terms hereof.

8. Periodic review.

8.1 Annual Review. City and Owner shall review all actions taken pursuant to the terms of this Agreement once annually, within sixty (60) days before the anniversary of the Effective Date, during each year of the Term unless the City and Owner agree in writing to conduct the review at another time.

8.2 Owner's Submittal. Within ninety (90) days before each anniversary of the Effective Date, Owner at its option may submit a letter ("Compliance Letter") to the City Community Development Director ("Director") describing Owner's compliance with the terms of this Agreement during the preceding year. The Compliance Letter shall include a statement that the Compliance Letter is submitted to City pursuant to the requirements of Government Code Section 65865.1. If Owner does not submit a Compliance Letter, a Compliance Letter reporting no material noncompliance events or conditions shall be deemed to have been submitted on the Owner's behalf on the 90th day prior to the anniversary date of the Effective Date.

8.3 City's Findings. Within thirty (30) days after receipt or constructive receipt of each Compliance Letter, the Director shall determine whether, for the year under review, Owner has demonstrated good faith substantial compliance with the terms of this Agreement. If the Director finds and determines that Owner has complied substantially with the terms of this Agreement, or does not determine otherwise within sixty (60) days after delivery of the Compliance Letter, the annual review shall be deemed concluded and this Agreement shall remain in full force and effect. Upon a determination of compliance, the Director shall issue at Owner's request a recordable certificate confirming Owner's compliance through the year(s) under review. Owner may record the certificate with the Santa Clara County Recorder's Office. If the Director initially determines a Compliance Letter to be inadequate in any respect, he or she shall provide written notice to that effect to Owner. Owner shall have the right to submit information pertaining to the issues raised. If after a duly noticed public hearing thereon the City Council finds and determines, on the basis of substantial evidence, that Owner has not complied substantially in good faith with the terms of this Agreement for the year under review, the City Council shall give written notice thereof to Owner specifying the noncompliance. If Owner fails to cure the noncompliance within a reasonable period of time established by the City Council, the City Council, in its discretion, may a) grant additional time for Owner's compliance, or, following a public hearing on the matter, b) modify this Agreement as to the affected Property to the extent necessary to remedy or mitigate Owner's noncompliance, or c) pursue other legal remedies allowed by law and this Agreement.

9. Default and Remedies.

9.1 Default. Failure by either City or Owner to perform any material term or provision of this Agreement shall constitute a default in the obligations between City and Owner hereunder, provided that the party alleging the default shall have given the other party advance written notice thereof and sixty (60) days within which to cure the condition or, if the nature thereof is such that it cannot be cured within that time, the party receiving notice shall not be in default hereunder if the party commences to perform its obligations within the sixty (60) day period and thereafter diligently completes performance. Written notice shall specify in detail the nature of the obligation to be performed by the party receiving notice.

9.2 Remedies. Upon City's material default, Owner shall have all of the remedies available to an Owner under California law, including the option to institute legal proceedings to specifically enforce, rescind or reform this Agreement, but excluding the right to seek or obtain an award of monetary damages from City. In no event shall City or any of its elected officials, officers, employees, agents, attorneys or

representatives be liable for any form of monetary damages in connection with or arising out of this Agreement. Upon Owner's material failure to pay the fees specified in the Master Plan, City shall be entitled to initiate legal proceedings to enforce this Agreement as to Owner. No action by any party during the Term hereof shall be deemed a waiver or release of any right to assert a claim for the remedies described herein from the other party.

10. Agreement to Amend or Terminate. City and Owner by mutual agreement may terminate or amend the terms of this Agreement, and the amendment or termination shall be accomplished in the manner provided under California law for the adoption of development agreements.

11. Mortgagee Protection: Certain Rights of Cure.

11.1 Mortgagee Protection. This Agreement shall be superior and senior to all liens placed upon the Property or portion thereof after the date on which a memorandum of this Agreement is recorded, including the lien of any deed of trust or mortgage ("Mortgage"). Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any Mortgage made in good faith and for value, but all of the terms and conditions contained in this Agreement shall be binding upon and effective against all persons and entities, including all deed of trust beneficiaries or mortgagees ("Mortgagees") who acquire title to the Property or any portion thereof by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise.

11.2 Mortgagee Not Obligated. No foreclosing Mortgagee shall have any obligation or duty under this Agreement to construct or complete the construction of any improvements required in connection with this Agreement, or to pay for or guarantee construction or completion thereof. City, upon receipt of a written request therefor, and an appropriate written assumption of Owner's rights and obligations from a foreclosing Mortgagee, shall permit all Mortgagees to succeed to the rights and obligations of the affected Owner under this Agreement, provided that all defaults by the Owner hereunder that are reasonably susceptible of being cured are cured by the Mortgagee as soon as is reasonably possible. The foreclosing Mortgagee thereafter shall comply with all of the provisions of this Agreement.

11.3 Notice of Default to Mortgagee. If City receives notice from a Mortgagee requesting a copy of any notice of default given to an Owner hereunder and specifying the address for service thereof, City shall deliver to the Mortgagee, concurrently with service thereof to the Owner, all notices given to the Owner describing all claims by the City that the Owner has defaulted hereunder. If City determines that the

Owner is not in compliance with this Agreement, City also shall serve notice of noncompliance on the Mortgagee concurrently with service thereof on the Owner. Each Mortgagee shall have the right during the same period available to the Owner to cure or remedy, or to commence to cure or remedy, the condition of default claimed or the areas of noncompliance set forth in City's notice. City's failure to provide notice hereunder shall not invalidate City's rights to assert or enforce any default.

12. Assignability.

12.1 Right to Assign. Assignments of Owner's right to develop the Property pursuant to this Agreement, which assignments are appurtenant to any sale, lease or other conveyance of the affected portion of the Property, and all assignments of Owner's rights conveyed pursuant to leases of improved space, are hereby specifically approved, and require no further advance City consent, provided that any such assignment must include a written assumption of Owner's rights and obligations hereunder, in form acceptable to City. All non-appurtenant assignments of rights to develop the Property hereunder shall become effective only upon written consent by City, which consent shall not be unreasonably delayed or withheld. Each successor in interest to Owner shall be bound by all of the terms and provisions. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties' successors, assigns and legal representatives. The terms of this Section 12.1 shall not restrict, prevent or otherwise affect Owner's ability to lease, sell or convey interests in the Property. This Agreement or a memorandum hereof shall be recorded by the City with the Santa Clara County Recorder's Office promptly upon execution hereof by the parties.

12.2 Covenants Run With The Land. During the Term of this Agreement, all of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding unconditionally upon the parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns, devisees, administrators, representatives, lessees and all other persons or entities acquiring the Property, any lot, parcel or any portion thereof, and any interest therein, whether by sale, operation of law or other manner, and they shall inure to the benefit of the parties and their respective successors.

13. General.

13.1 Construction of Agreement. The language in this Agreement in all cases shall be construed as a whole and in accordance with its fair meaning. The captions of the paragraphs and subparagraphs of this Agreement are for convenience only and

shall not be considered or referred to in resolving questions of construction. This Agreement shall be governed by the laws of the State of California.

13.2 No Waiver. Subject to the provisions of Section 9.2, no delay or omission by a party in exercising any right or power accruing upon the noncompliance or failure to perform by the other party under the provisions of this Agreement shall be construed as a waiver thereof. A waiver by one party of any of the covenants or conditions to be performed by the other party shall not be construed as a waiver of any subsequent breach of the same or other covenants and conditions hereof. Nothing contained herein shall be interpreted as waiving any right to assert or contest the value of or compensation paid for any portion of the Property acquired by any public agency.

13.3 Agreement is Entire Agreement. This Agreement and all Exhibits attached hereto or incorporated herein comprise the sole and entire Agreement between the parties concerning the Property. The parties acknowledge and agree that none of them has made any representation with respect to the subject matter of this Agreement or any representations inducing the execution and delivery hereof, except the representations set forth herein, and each party acknowledges that it has relied on its own judgment in entering this Agreement. The parties further acknowledge that all statements or representations that heretofore may have been made by any of them to any other are void and of no effect, and that none of them has relied thereon in its dealings with the other party.

13.4 Estoppel Certificate. Owner from time to time may deliver written notice to City requesting written certification that, to City's knowledge (i) this Agreement is in full force and effect and constitutes a binding obligation of the parties; (ii) this Agreement has not been amended or modified either orally or in writing, or, if it has been amended or modified, specifying the nature of the amendments or modifications; and (iii) Owner is not in default in the performance of its obligations under this Agreement, or if in default, describing therein the nature and monetary amount, if any, of the default. Upon receiving a request hereunder, City shall execute and return the certificate within thirty (30) days after receipt thereof. The Director shall have the right to execute the certificates requested by Owner hereunder. At the request of Owner, the certificates provided by City establishing the status of this Agreement with respect to any lot or parcel shall be in recordable form, and Owner shall have the right to record the certificate against the Property at its cost.

13.5 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but the counterparts together shall constitute only one Agreement.

13.6. Severability. Each provision of this Agreement which is adjudged to be invalid, void or illegal shall in no way affect, impair or invalidate any other provisions hereof, and the other provisions shall remain in full force and effect.

13.7 Further Documents. Each party hereto agrees to execute all other documents or instruments necessary or appropriate to effectuate and implement this Agreement.

13.8 Time of Essence. Time is of the essence in the performance of every covenant and obligation to be performed by the parties hereunder.

13.9 Attorneys' Fees. In the event of any dispute between the parties involving the covenants or conditions contained in this Agreement, the prevailing party shall be entitled to recover reasonable expenses, attorneys' fees and costs.

13.10 No Third Party Rights. This Agreement is not intended to, nor shall it be interpreted to, create any benefits or rights in persons or entities not a party hereto, including specifically other owners of property within the Milpitas Business Park, and City shall have no liability of any kind whatever to any such person or entity for any actions or inactions of City hereunder nor for any breach of this Agreement by City or by Owner.

14. Notice. Except as otherwise expressly provided herein, all notices and demands pursuant to this Agreement shall be in writing and delivered in person, by commercial courier or by first-class certified mail, postage prepaid and return receipt requested. Except as otherwise expressly provided herein, notices shall be considered delivered when personally served, or upon actual receipt if delivered by commercial courier or by mail. Notices shall be addressed to each party in the manner identified below; provided, however, that either party may change its address for purposes of this Section by giving written notice thereof to the other party:

City: City Clerk
 City of Milpitas
 455 East Calaveras Boulevard
 Milpitas, California 95035

Owner: OCTEL COMMUNICATIONS CORPORATION,
a California corporation
c/o Jody Bisson, Chief Financial Officer
1001 Murphy Ranch Road
Milpitas, CA 95035

The provisions of this Section shall be deemed directive only and shall not detract from the validity of any notice given in a manner which would be legally effective in the absence of this Section.

IN WITNESS WHEREOF, City and Owner have caused this Agreement to be executed in one (1) or more copies as of the day and year first above written.

APPROVED AS TO FORM:

ATTEST:

City Attorney

City Clerk

"CITY"

THE CITY OF MILPITAS,
a California municipal corporation

By _____
Mayor

"OWNER"

OCTEL COMMUNICATIONS CORPORATION,
a Delaware corporation

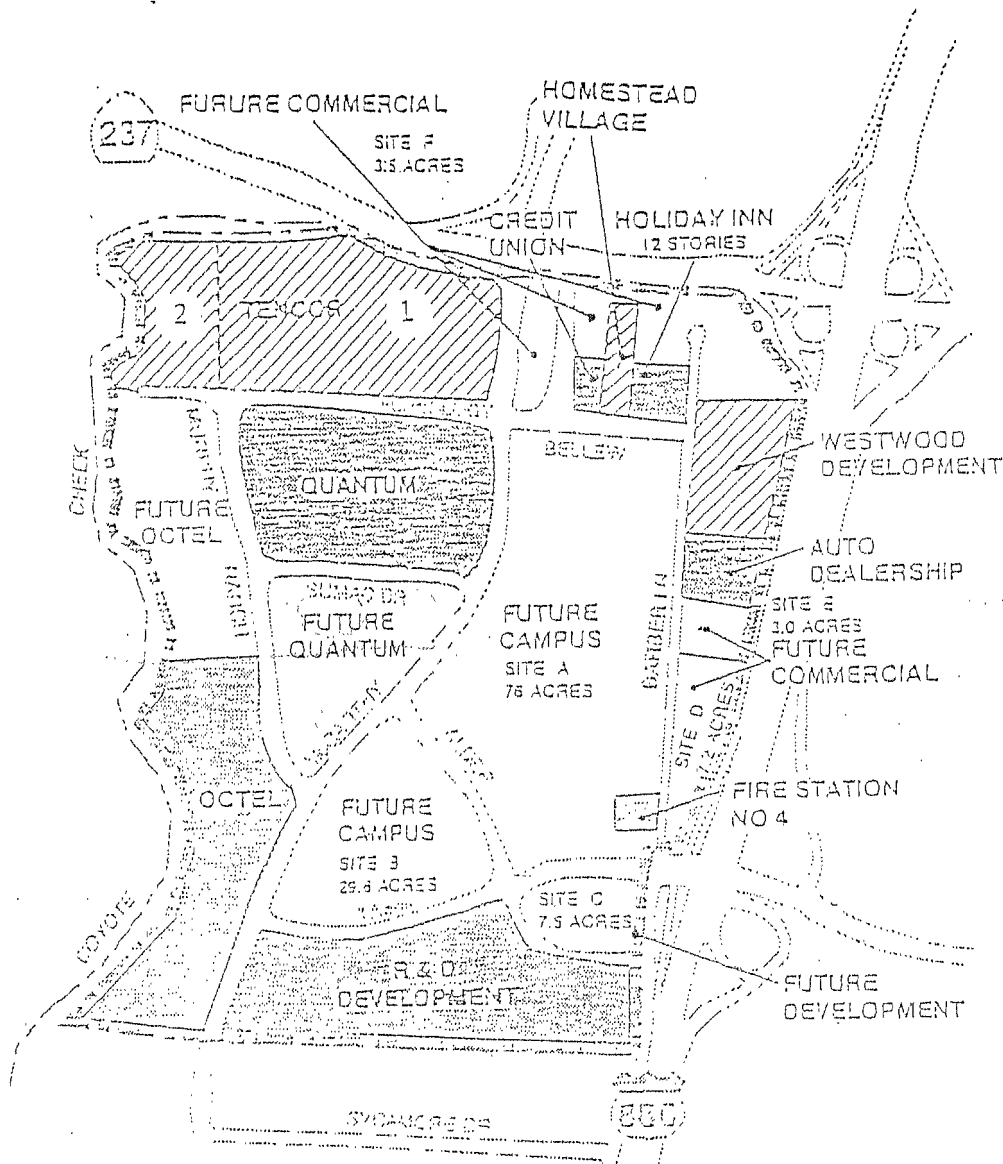
By _____
Jody Bisson,
Chief Financial Officer

APPROVED AS TO FORM

Attorney for Owner

EXHIBIT B: MASTER PLAN

Milpitas Business Park Existing and Proposed Development



DEVELOPER / COMPANY	USE	REFERENCE TO PLAN	PROJECT SQ FT
EXISTING			
Peery/Arnilla	Office/R&D	R & D Development	603,000
Quantum	Office/R&D	Quantum	600,000
Holiday Inn	Hotel	Holiday Inn	323 Rooms
Billings Chevrolet	General Commercial	Auto Dealership	27,000
Technology Federal Credit	General Commercial	Credit Union	17,000
Homestead Village	Hotel	Homestead Village	113 Rooms
Tencor	Office/R&D	Tencor - 1	545,300
Octal	Office/R&D	Octal	375,000
PROPOSED			
Peery/Arnilla	Office/R&D	Site A - Future Campus	1,159,000
Peery/Arnilla	Office/R&D	Site B - Future Campus	400,000
Peery/Arnilla	Office/R&D	Site C - Future Development	114,000
Peery/Arnilla	General Commercial	Site D - Future Commercial	73,400
Quantum	Office/R&D	Quantum Future	193,000
Ulfans Center	General Commercial	Site E - Future Commercial	32,700
Cypress/Garcor Commercial	General Commercial	Site F - Future Commercial	55,200
Tencor	Office/R&D	Tencor - 2	175,970
Octal	Office/R&D	Octal Future	375,000
TOTAL			4,967,670